IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 59 OF 1989

Maruti Hari Bhuruk ...Appellant.

V/s

1. Superintendent, Central
Excise & Customs Department
Pune (Sessions case No.246/1988)

2. State of Maharashtra ...Respondents.

None for the appellant.
Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.
DATE : 30TH MARCH, 2005

ORAL JUDGMENT

1. Heard the learned APP for the State. None appears for the appellant.

2. The learned APP has taken me through the judgment and order of the Trial Court. The appellant was charged for an offence punishable under section 20(b)(i) and 25 of the Narcotic Drugs and Psychotropic Substances Act.

3. Prosecution case is that the information was received on 12/8/1987 by P.W.1 that the appellant was illegally cultivating Cannabis plants in his field. This information was reduced in writing and was given to the Superior Officer. Thereafter, a raid was

conducted and samples of the plants were taken and sent to the Public Analyst. Thereafter, a charge-sheet was filed. The Trial Court convicted the accused for the offence punishable under section 20 and 25 of the N.D.P.S. Act and sentenced him to sufffer R.I. for five years and 10 years respectively.

4. The learned APP has taken me though the evidence adduced by the prosecution.

5. In my view, it has not been established by the prosecution that the said field No.430 in which the plants were cultivated was exclusively owned by the appellant. From the record, it can be seen that this field was owned by four persons. It has not come in evidence that the appellant was in exclusive possession and was the absolute owner of the said property. Apart from that, there is obviously a discrepancy in the report which is obtained from the Chemical Analyser. The sample which was sent to the C.A's Office as per the letter of requisition at Exhibit-24 was received by the Official of the C.A. Office and an acknowledgement was also given. However, from the record, it can be seen that three samples of the Cannabis plants were taken in three

different packets and they were sealed in the presence of panchas.

6. So far as the panch witnesses are concerned, it has been established that they had also acted as panchas in four different raids which were conducted in the village on the very same day. However, from the evidence of P.W.3, it can be seen that the sample which was sent to C.A. was only one sealed packet. This creates a doubt regarding the prosecution case that three samples were sent for analysis. Further, there is no evidence on record to show who had deposited the samples and whether any entry was made in the property register. Thus no connection has been established between the goods which were seized and the samples which have been analysed. Further, a search warrant which was issued does not disclose that it was in respect of Survey No.430. This discrepancy goes to the root of the matter. In my view, the prosecution therefore has failed to establish beyond the reasonable doubt that the appellant was responsible for cultivating the said Cannabis plants in filed No.430. Apart from that, the appellant was almost 60 years old when the appeal was filed in 1989.

7. Considering all these circumstances, in my view, no case is made out by the prosecution. The finding recorded by the Trial Court, therefore, is liable to be set aside and quashed. Appeal is allowed. Appellant is acquitted of the offence with which he was charged. The bail bonds of the appellant to stand cancelled.

V.M. KANADE, J.